

IN THE UNITED STATES DISTRICT COURT
OR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM BUFORD,

Petitioner, No. 2:03-cv-02412 ALA (HC)

VS.

MATTHEW C. KRAMER, ORDER
Respondent.

Petitioner William Buford, a state prisoner proceeding pro se, has timely filed a notice of appeal and request for a certificate of appealability of this Court's June 11, 2008 order denying his application for a writ of habeas corpus. On July 11, 2008 this Court entered an Order directing the Clerk of the Court to refer the appeal to the Ninth Circuit because the challenged decision relates to the execution of Petitioner's sentence, and not to a state court judgment or sentence derived therefrom, thus no certificate of appealability is required. (Doc. No. 25).

On July 23, 2008, Mr. Buford filed a motion to proceed in forma pauperis on appeal, pursuant to Fed. R. App. P. 24(a)(3), which provides

[A] party who has been permitted to proceed in an action in the district court in forma pauperis . . . may proceed on appeal in forma pauperis without further authorization unless . . . the district

court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed

Fed. R. App. P. 24(a)(3). (Doc. No. 27). The Court finds no application to proceed in forma pauperis on the district court docket. The Court finds no other evidence in the Court's records, and Mr. Buford has cited none, indicating that Mr. Buford applied or was permitted to proceed in forma pauperis in this action in the district court. Moreover, in an Order dated November 26, 2003, (Doc. No. 2), the Court indicated that Mr. Buford had paid the filing fee, which is ordinarily waived for parties filing in forma pauperis. If Mr. Buford has evidence that the Court permitted him to proceed in the district court in forma pauperis, he should re-file this motion attaching copies of or including citations to the relevant, supporting documentation.

Otherwise, if Mr. Buford wants to proceed in forma pauperis on appeal, Fed. R. App. P. 24(a)(1)(A)-(C) requires that he file a separate motion in this Court, attaching an affidavit that “(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party’s inability to pay or to give security for fees and costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to present on appeal.”

Accordingly, Petitioner’s “Motion to Proceed In Forma Pauperis Pursuant to FRAP 24(a)(3)” is DENIED. IT IS SO ORDERED.

DATED: August 4, 2008

/s/ Arthur L. Alarcón
UNITED STATES CIRCUIT JUDGE
Sitting by Designation